

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Eric Keyon Swinton, #378199,)	Case No.: 4:22-cv-00574-JD-TER
)	
Plaintiff,)	
)	
vs.)	OPINION & ORDER
)	
South Carolina Dept. of Corrections,)	
Kirkland Correctional Institute, Sgt. Russell,)	
Lt. Level,)	
Defendants.)	
)	

This matter is before the Court with the Report and Recommendation of United States Magistrate Thomas E. Rogers, III (“Report and Recommendation”) (DE 21), made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2) of the District of South Carolina.¹ Eric Swinton (“Swinton” or “Plaintiff”), proceeding *pro se* and *in forma pauperis*, brought this action pursuant to 42 U.S.C. § 1983, alleging violations under the Eighth Amendment as to deliberate indifference of medical needs. (DE 10, p. 6.)

On March 7, 2022, Plaintiff was informed via order of the Court of deficiencies in his Complaint that would subject his Complaint to summary dismissal and was given an opportunity to file an Amended Complaint. (DE 6.) Plaintiff filed an Amended Complaint (DE 10); however, Plaintiff failed to cure the deficiencies related to defendants South Carolina Department of Corrections (“SCDC”) and Kirkland Correctional Institution (“Kirkland”).

¹ The recommendation has no presumptive weight, and the responsibility for making a final determination remains with the United States District Court. See Mathews v. Weber, 423 U.S. 261, 270-71 (1976). The court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

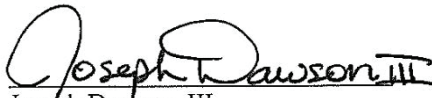
The Report and Recommendation was issued on May 11, 2022, recommending partial summary dismissal² because Plaintiff failed to state a claim upon which relief could be granted as to all defendants named, except defendants Russell and Level. Plaintiff filed no objections to the Report and Recommendation. In the absence of objections to the Report and Recommendation, this Court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983). The Court must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

Accordingly, after a thorough review of the Report and Recommendation and the record in this case, the Court adopts the Report and Recommendation and incorporates it herein.

It is, therefore, **ORDERED** that Defendants South Carolina Department of Corrections and Kirkland Correctional Institution are summarily dismissed with prejudice and without issuance and service of process.

IT IS SO ORDERED.

Florence, South Carolina
July 25, 2022


Joseph Dawson, III
United States District Judge

NOTICE OF RIGHT TO APPEAL

² The Fourth Circuit Court of Appeals has found where the district court already afforded an opportunity to amend, the district court has the discretion to afford another opportunity to amend or can “dismiss the complaint with prejudice, thereby rendering the dismissal order a final, appealable order.” Workman v. Morrison Healthcare, 724 Fed. Appx. 280 (4th Cir. June 4, 2018)(Table); Knox v. Plowden, 724 Fed. Appx. 263 (4th Cir. May 31, 2018)(Table)(on remand, district judge dismissed the action with prejudice); Mitchell v. Unknown, 2018 WL 3387457 (4th Cir. July 11, 2018)(unpublished). Thus, in line with Fourth Circuit cases, the Report recommends the dismissal of defendants SCDC and Kirkland in this case be with prejudice, as Plaintiff has had an opportunity to amend, filed an Amended Complaint, and has failed to cure deficiencies as to those defendants.

Plaintiff is hereby notified that he has the right to appeal this order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.